

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD01-06-046]

RIN 1625-AA00

Safety Zone: Barnstable Fireworks Display, Lewis Bay,
Hyannis, Massachusetts.

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone in all navigable waters within a one thousand two hundred (1200) foot radius of the fireworks launching platform, located in Lewis Bay, Hyannis, Massachusetts on July 1, 2006. The safety zone is needed to safeguard the public from possible hazards associated with a fireworks display. Entry into this zone will be will be prohibited unless authorized by the Captain of the Port, Southeastern New England.

DATES: This rule is effective from 9 p.m. EDT on July 1, 2006 through 10 p.m. EDT on July 1, 2006.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD01-06-046 and are available for inspection or copying at U.S. Coast Guard

Sector Southeastern New England, East Providence Office, 20 Risho Avenue, E. Providence, RI between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Edward G. LeBlanc at Sector Southeastern New England, East Providence Office, (401) 435-2351.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Details regarding this event were not available to the Coast Guard in sufficient time to draft or publish an NPRM or a final rule 30 days in advance of its effective date. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to close a portion of the waterway and protect the marine public from hazards associated with this fireworks display.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. The finalization of logistical details associated with this fireworks display were only recently determined. Any delay encountered in this regulation's effective date would be

contrary to the public interest since the safety zone is needed to prevent traffic from transiting a portion of Lewis Bay during the fireworks display thus ensuring that the maritime public is protected from any potential harm associated with such an event.

Background and Purpose

This regulation establishes a safety zone in all navigable waters within a one thousand two hundred (1200) foot radius of the fireworks launching platform, located in Lewis Bay, Hyannis, Massachusetts in approximate position 41-38.113N, 070-15.885W, from 9 p.m. EDT on July 1, 2006 until 10 p.m. EDT on July 1, 2006. This safety zone is needed to protect the maritime community from possible hazards associated with a fireworks display that will be launched from a platform in Lewis Bay, Hyannis, Massachusetts. No vessel may enter the safety zone without permission of the Captain of the Port (COTP), Southeastern New England.

Discussion of Rule

The Town of Barnstable is sponsoring a fireworks display on July 1, 2006. During the effective period of the safety zone vessel traffic will be restricted in the vicinity of the fireworks event so that the maritime public will be protected from the potential hazards associated with this type of display. The safety zone will be enforced from

9 p.m. EDT on July 1, 2006 until 10 p.m. EDT on July 1, 2006. Marine traffic may transit safely outside the temporary zone during the event.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. The Coast Guard expects the economic impact of this rule to be so minimal that a full regulatory evaluation under paragraph 10e of the regulatory policies and procedures of DHS is unnecessary. The effect of this regulation will not be significant as it involves a very small area of Lewis Bay, Hyannis, Massachusetts, allowing vessel traffic to transit around the site, the event will be entered into the local notice to mariners, extensive maritime advisories will be made in advance of the event, and the safety zone will close this portion of the waterway for only one hour.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small

businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners and operators of vessels intending to transit Lewis Bay in the vicinity of the launch site during the fireworks show. The safety zone will not have a significant impact on a substantial number of small entities for the following reasons: The safety zone involves a very small area of Lewis Bay, Hyannis, Massachusetts, allowing vessel traffic to transit around the site, the event will be entered into the local notice to mariners, extensive maritime advisories will be made in advance of the event, and the safety zone will close this portion of the waterway for only one hour.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we offer to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If your small

business or organization would be affected by this rule and you have any questions concerning its provisions or options for compliance, please call Mr. Edward G. LeBlanc at (401) 435-2351.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or

risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities

unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction, from further environmental documentation. This rule fits the category selected from paragraph (34)(g), as it establishes a safety zone. A final "Environmental

Analysis Check List" and a final "Categorical Exclusion Determination" will be available in the docket where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C 191; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1..

2. Add temporary § 165.T01-046 to read as follows:
§ 165.T01-046 Safety Zone: Barnstable Fireworks Display, Lewis Bay, Hyannis, Massachusetts.

- (a) Location. The following area is a safety zone: All navigable waters of Lewis Bay, Hyannis, Massachusetts, within a one thousand two hundred (1200) foot radius of the fireworks launching platform, located in Lewis Bay, Hyannis,

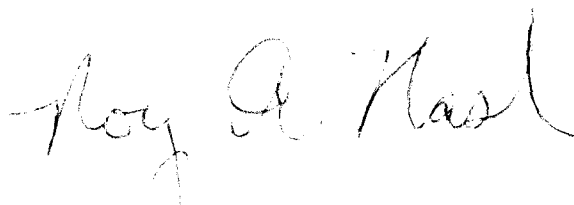
Massachusetts in approximate position 41-38.113N,
070-15.885W.

(b) Effective Date. This section is effective from 9
p.m. EDT on July 1, 2006 until 10 p.m. EDT on July
1, 2006.

(c) Regulations.

- (1) The general regulations governing safety zones
contained in 33 CFR 165.23 apply.
- (2) All persons and vessels shall comply with the
instructions of the Coast Guard Captain of the
Port and the designated on-scene U.S. Coast
Guard patrol personnel. These personnel include
commissioned, warrant, and petty officers of
the Coast Guard. Upon being hailed by a U.S.
Coast Guard vessel by siren, radio, flashing
light or other means, the operator of a vessel
shall proceed as directed.

Dated: 29 June 06



R. A. NASH
Captain, U.S. Coast Guard
Captain of the Port
Sector Southeastern New England